S.B.Civil Writ Petition NO.1617/2004

Smt. Bhupendra Kaur vs. Gurcharan Singh & ors.

DATE OF ORDER : - 25.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sandeep Shah, for the petitioner.

None present for the respondents.

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Heard learned counsel for the petitioner as no one is present for the respondents despite service.

The petitioner is aggrieved against the order dated 2.4.2005 by which the petitioner's application under Order 1 Rule 10 CPC was dismissed by the trial court.

According to learned counsel for petitioner, the petitioner is daughter of deceased Jaswant Singh and his mother Jasveer Kaur contracted marriage with Balwant Singh (brother of deceased Jaswant Singh). In a suit for partition, the petitioner being daughter of Jaswant Singh, submitted an application for being impleaded as party but that was rejected by the trial court.

According to learned counsel for petitioner, there are number of

litigation pending in which the petitioner claimed that she is daughter of Jaswant Singh and entitled for share in the property. The trial court after considering two dates of birth of the petitioner, rejected the petitioner's application.

Looking to the nature of controversy between the parties, the petitioner, whether is a descendant of Jaswant Singh and has share in the property could have been decided in a suit for partition between the alleged co-sharers and there is no need to drag the petitioner to initiate a separate proceedings by filing a separate suit.

According to learned counsel for petitioner, even for the purpose of deciding the issue already framed by the trial court, the presence of the petitioner is necessary.

After going through the facts of the case, it is clear that the trial court committed serious error of jurisdiction in rejecting the petitioner's application because of the simple reason that in a suit for partition, if a person who is claiming himself to be descendant of the deceased – joint owner of the property, he/she should have been impleaded as party so that the dispute can be settled once for all between all claimants.

In view of the above discussion, the present writ petition is allowed, the impugned order dated 28.2.2004 is set aside, the petitioner's application under Order 1 Rule 10 C.P.C. Is allowed and she is impleaded as defendant in the suit.

(Prakash Tatia), J.

s.phophaliya/-